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IN THE

Supreme Court of the United States

Term, 194

No. 846 / 103

ESTATE OF GILLIAT G. SCHROEDER, DECEASED, LOUISA R. SCHROEDER AND HELEN S. CROLL, *Executors*,
Petitioners.

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit and Brief in Support Thereof.

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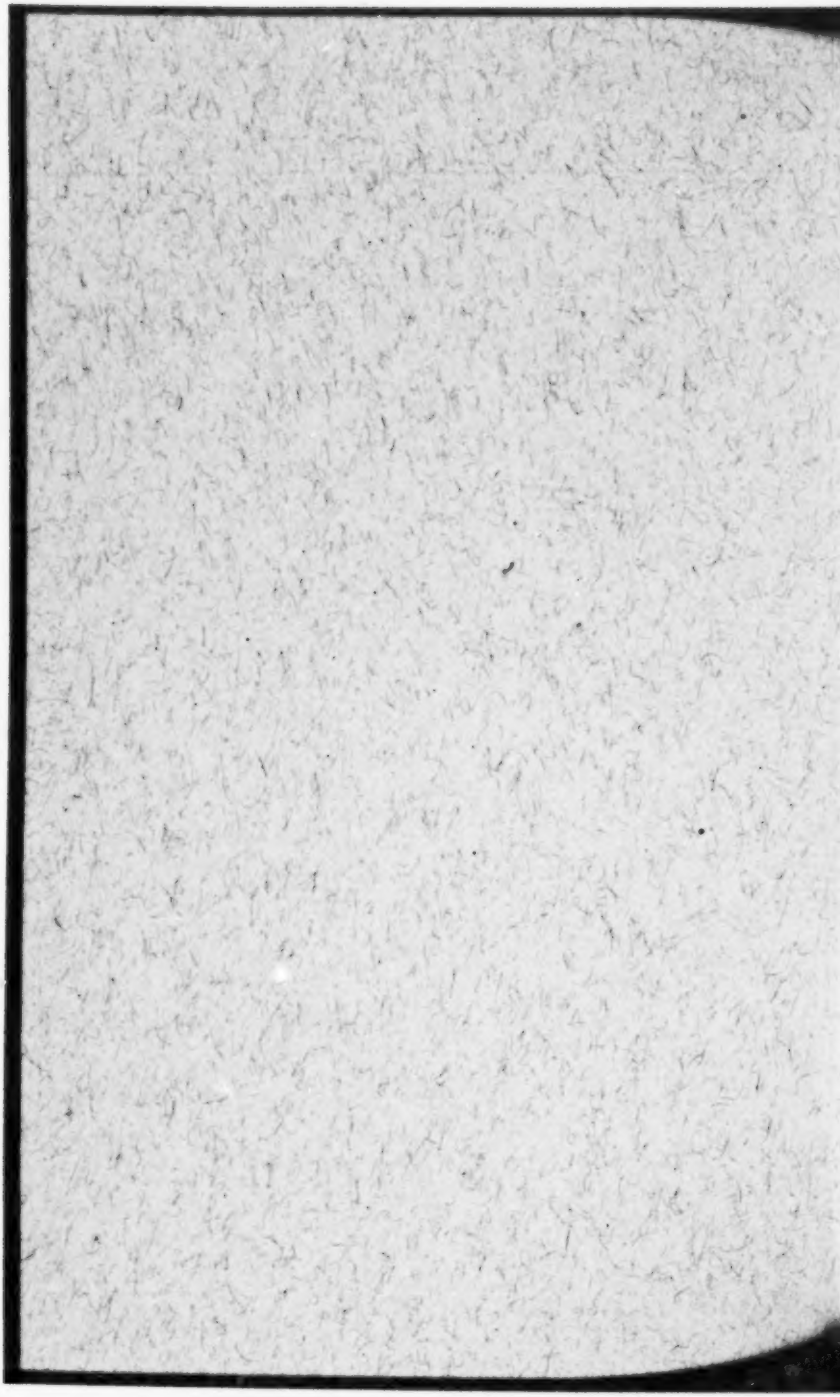

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Term, 194

No.

ESTATE OF GILLIAT G. SCHROEDER, DECEASED, LOUISA R. SCHROEDER AND HELEN S. CROLL, *Executors*,

Petitioners.

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit and Brief in Support Thereof.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Louisa R. Schroeder and Helen S. Croll, Executors of the Estate of Gilliat G. Schroeder, deceased, petition for a writ of certiorari to review a decision of the U. S. Court of Appeals for the Second Circuit reversing a decision of the Tax Court of the United States entered May 26, 1947.

Jurisdiction

Judgment of the Court of Appeals was entered on March 9, 1949. The opinion of the Court of Appeals is reported in 172 F. (2d) 864. The jurisdiction of this Court is invoked under Section 1254 (1) of the Judicial Code, 28 U. S. C. Section 1254 (1).

Summary of the Matter Involved

This is a Federal estate tax case involving the taxability of an irrevocable inter vivos trust established by the decedent, a resident of New York, on January 11, 1928, nearly fifteen years prior to his death on October 3, 1942.

The Commissioner of Internal Revenue unsuccessfully contended in the Tax Court that this inter vivos trust was taxable solely by reason of the alleged existence of a "possibility of reverter" in the decedent. The Tax Court did not pass on the question as to whether decedent actually owned a reverter, but held for the taxpayer because there was no reservation of a reverter by the *express words* of the deed of trust. Thereafter, in seeking reversal of the Tax Court's decision in the Court of Appeals, the Commissioner again urged, as the only ground of taxability, the asserted existence of a "reverter" in the decedent under New York law.

The taxpayers (petitioners herein) have at all times denied the existence of any possibility of reverter in the decedent, and the briefs in this case were submitted to the Court of Appeals on the assumption that the point involved was the existence or non-existence in the decedent of a possibility of reverter.

While the case was pending before the Court of Appeals this Court decided *Commissioner v. Estate of Church,*

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335 U. S. 632, the opinion of the court having been filed on January 17, 1949.

Thereafter on March 9, 1949, the Court of Appeals rendered a *per curiam* opinion in open court reversing the decision of the Tax Court solely "on authority of" the *Church* decision. Accordingly, the point argued in the Tax Court and on brief in the Court of Appeals, i.e., Did the decedent have a "reverter" in the principal of the trust, was left undecided because the court noted in the record of the case that the decedent had retained a life interest in the income of the trust and that this fact alone warranted application of the *Church* decision.

After the time for rehearing, reargument or other application to the Court of Appeals had expired, the Commissioner of Internal Revenue, on April 15, 1949, announced his intention to regard the *Church* case as being entirely inapplicable to the estate of any decedent who died before January 17, 1949, the date on which this Court filed its opinion in the *Church* case (see Federal Register, Vol. 14, Number 72, page 1824, at 1825, paragraph (D), issue of April 15, 1949). This newly announced principle is intended to become a part of the Estate Tax Regulations which, unless later modified, are to provide:

> "In the case of a decedent who died on or before January 17, 1949, the date of the decision of the United States Supreme Court in 'Commissioner v. Estate of Francois L. Church,' 335 U. S. 632, property transferred before 10:30 P.M., eastern standard time, March 3, 1931, shall not be included in the gross estate under this section if the Commissioner, *whose determination shall be conclusive*, shall determine that the decedent's

only right or interest in the property consisted of an estate for his life." (Italics supplied.)

The decedent in this case died prior to January 17, 1949. He had established the trust irrevocably prior to March 3, 1931. But the Commissioner has failed to determine in this case that the decedent's "only right or interest in the [transferred] property" consisted of an estate for life within the meaning of the newly announced Treasury proposal to treat the decision in the *Church* case as having prospective operation only.

Questions Presented

1. Does the Commissioner of Internal Revenue, upon promulgating a general rule of tax exemption, have authority to determine "conclusively," questions of law which decisively govern the decision as to whether or not a particular taxpayer is entitled to the exemption?

2. Did the decedent in this case as a matter of law retain any "right or interest" in the trust estate established by deed dated January 11, 1928, other than a life estate in the income of the trust?

Reason for Granting the Writ of Certiorari

The discretionary power of this Court to grant the writ prayed for is respectfully invoked upon the following grounds:

1. An important question of Federal law is presented by the promulgation of the intended Treasury Regulation, whereby the Commissioner of Internal Revenue assumes the power to determine "conclusively" questions of law arising as a result of his announced intention to regard

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the decision of this Court in *Commissioner v. Estate of Church*, 335 U. S. 632, as inapplicable to the estate of any decedent dying before it was rendered.

Prayer

For the foregoing reasons your petitioners pray that a writ of certiorari may issue out of this Court to the United States Court of Appeals for the Second Circuit, commanding said Court to certify and send to this Court on a day to be determined, the full and complete transcript of the record of all the proceedings of such Court of Appeals had in this case, to the end that the case may be reviewed and determined by this Court; that the judgment of the Court of Appeals may be reversed, and that petitioners be granted such other and further relief as may be proper.

Dated: June 6, 1949.

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BRIEF IN SUPPORT OF PETITION

The Opinions Below

The opinion of the Tax Court was an unreported memorandum opinion, but is on file and will be printed by the Clerk with the record below. The opinion of the Court of Appeals is reported in 172 F. (2d) 864.

Statement of the Case

A summary statement of the history of these proceedings is given in the petition, p. 2, above. It is only necessary to add a reference to the provisions of the deed of trust established by the decedent on January 11, 1928.

With respect to the disposition of principal, the deed provided:

> ". . . on the death of the party of the first part [the decedent], to pay, turn over and distribute the principal of said trust estate in equal shares to and among HELEN STEVENS SCHROEDER and GILLIAT G. SCHROEDER, JR., the children of the party of the first part, or if said children or either of them shall not survive the party of the first part, then to pay, turn over and distribute the principal of the said trust estate to such of the said children of the said party of the first part as shall survive him and the issue of such of said children of the party of the first part as may have died leaving issue surviving, such issue to take the share or interest which his, her or their parent would have taken if living."

The decedent was survived by his two children and by three grandchildren.

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Argument

1. THE ASSERTED POWER OF THE COMMISSIONER OF INTERNAL REVENUE TO RESERVE TO HIMSELF ALONE FINAL AUTHORITY TO DECIDE QUESTIONS OF LAW WHICH MAY ARISE UNDER THE PROPOSED TREASURY REGULATION IS PRESUMPTIVELY IN VIOLATION OF THE DOCTRINE OF SEPARATION OF POWERS AND ILLEGALLY ENCROACHES ON THE CONSTITUTIONAL FUNCTIONS OF THE COURTS.

In view of the large number of cases which are inevitably affected when this Court overrules a prior tax decision, it is no doubt essential to the orderly administration of the office of the Commissioner of Internal Revenue that he be permitted to apply the new decision prospectively and not retroactively.

In this case, if the Commissioner had merely issued a flat ruling that *May v. Heiner*, 281 U. S. 238, was to be applied to the estates of all decedents who had died prior to the filing of the opinion in the *Church* case, and that the *Church* decision would apply to the estates of all decedents dying after it had been rendered, the result would have been consistent with the desire to avoid retroactive changes, and would have left the courts with full authority to decide all questions of law which might arise either with respect to the rule as it existed while *May v. Heiner* was in effect or as it stood after the *Church* decision was rendered.

Petitioners do not question the authority of the Commissioner to exempt from the *Church* decision the broad class of cases which he has purported to exempt under the proposed Treasury Regulation, but in asserting the absolute, uncontrolled power to determine for himself whether

or not the rule of exemption is or is not to be applied in a particular case, it would appear that he has illegally invaded the province of the courts. Indeed it would seem at least doubtful if Congress itself could, consistently with the Constitution, provide by law that the *Church* decision should have only prospective force but that the Commissioner of Internal Revenue should have the final and unreviewable authority to determine all matters, including questions of law, which might arise in applying the exempting statute to estates of decedents dying before the *Church* decision.

In any case, it is clear that an effort to usurp a judicial function is involved in the Commissioner's assumption of the ultimate power to decide specific issues of law in particular cases arising under the proposed Regulation.

2. THE DECEDENT IN THIS CASE HAD NO POSSIBILITY OF REVERTER OR OTHER INTEREST (EXCEPT HIS LIFE ESTATE) UNDER NEW YORK LAW, AND THE COMMISSIONER COULD NOT VALIDLY HOLD OTHERWISE.

Examination of the deed executed on January 11, 1928, disclosed that the decedent's primary disposition of principal of the trust was as follows:

> "[upon the death of the decedent] to pay, turn over and distribute the principal of the said trust estate in equal shares to and among HELEN STEVENS SCHROEDER and GILLIAT G. SCHROEDER, JR., the children of the party of the first part . . ."

Under this language there can be no question but that the two children acquired vested remainders in the principal immediately upon execution of the deed and if the

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provisions of the deed had ended there, the death of both children during the decedent's lifetime would in no way have affected their absolute ownership of the vested remainders. Their vested future interests in principal would have passed under their wills or in the absence of wills to their next of kin.

Does the subsequent alternative disposition in the deed require that these vested estates be divested except in favor of the issue of a deceased child or the survivor of the two children? The subsequent language is

> "or if said children or either of them shall not survive the party of the first part, then to pay, turn over and distribute the principal of the said trust estate to such of the said children . . . as shall survive him [the decedent] . . . and the issue of such of said children . . . as may have died leaving issue surviving. . . ."

Petitioners contend that the *vested* remainders given at the outset to the two children of the decedent were intended to be divested under the alternative disposition *only in the event the expressly made substitutionary gifts took effect*, i.e., only in the event that *one* of the decedent's two children or their issue survived the decedent; and that if the substitutionary gifts did not take effect *at all* by reason of the failure of any of the decedent's children or their issue to survive him, then the vested remainders given to the two children in the first instance would remain undivested and would have passed to the estates of decedent's two children and not to the decedent.

The construction contended for by the petitioners has been recognized by the American Law Institute in the *Restatement of the Law of Property*, Section 254, and is

stated in *Page* on *Wills*, 1926 Ed., Vol. II, p. 1861, as follows:

> "Vested defeasible remainders are often created by a gift to A but providing that if he should die before a certain time leaving issue, his interest shall pass to such issue. *Such a devise is not defeated by the death of the devisee without issue.*" (Italics supplied.)

This rule of construction has been applied in New York where the decedent in this case resided. See *Matter of Dudley*, 168 N. Y. Misc. 695.

3. REVERSAL OF THE DECISION BELOW AND THE DIRECTION OF JUDGMENT FOR PETITIONERS WOULD BE CONSISTENT WITH PRECEDENT IN THIS COURT.

Although the decision of the Court of Appeals in this case reversed a Tax Court decision in favor of the petitioners and did so on a point never argued in the Tax Court or on brief in the Court of Appeals, the holding of the Court of Appeals was in accordance with the intervening decision in the *Church* case. Accordingly, petitioners do not contend that the decision below was wrong when entered.

But if the subsequently proposed Treasury Regulation, insofar as it purports to deprive the *Church* case of retroactive effect, is to be regarded as ultimately acquiring the force and effect of law, this Court may consistently with precedent apply the law as it exists at the time of review. See *Carpenter v. Wabash Railway Co.*, 309 U. S. 23. Petitioners accordingly submit that as a matter of procedure it would be possible for the Court to hold:

1. Assuming the Commissioner's Regulation is not modified prior to review of this case by the Court, the

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Church case is inapplicable because the decedent, Gilliat G. Schroeder, died before the decision in that case was rendered.

2. The courts have the ultimate authority to determine whether or not the decedent had any "right or interest" in the trust estate other than his interest in the income for life.

3. The decedent had no right or interest in the trust estate except his life estate and therefore the original judgment of the Tax Court in favor of the petitioners must be reinstated.

In the alternative, if this Court were of the opinion that the question of New York law should first be passed upon by the Court of Appeals for the Second Circuit, the case could be remanded with directions to that court to determine whether or not, as a matter of law, decedent actually did have any interest in the trust other than his life estate. It is noted that neither the Tax Court nor the Court of Appeals decided this question, although it was argued by petitioners; and petitioners submit that the question should be judicially determined.

It is respectfully submitted that a writ of certiorari should issue to the Court of Appeals for the Second Circuit as prayed for in the annexed petition.

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IN THE

Supreme Court of the United States

October Term, 1949

No. 103

ESTATE OF GILLIAT G. SCHROEDER, DECEASED, LOUISA R. SCHROEDER AND HELEN S. CROLL, Executors,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Petitioners' Supplemental Brief in Support of Petition for Certiorari to the United States Court of Appeals for the Second Circuit.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1949

No. 103

ESTATE OF GILLIAT G. SCHROEDER, DECEASED, LOUISA R. SCHROEDER AND HELEN S. CROLL, Executors,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Petitioners' Supplemental Brief in Support of Petition for Certiorari to the United States Court of Appeals for the Second Circuit.

STATEMENT OF MATTERS ARISING SINCE THE FILING OF THE PETITION.

On September 8, 1949, the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, formally adopted and promulgated a Treasury Regulation which has an important bearing on this case. (T. D. 5741; Federal Register Volume 14, No. 174, p. 5536, Par. (E), Issue of September 9, 1949).

This new Regulation provides:

> "In the case of a decedent who died on or before January 17, 1949, the date of the decision of the United States Supreme Court in *Commissioner v. Estate of Francois L. Church*, 335 U. S. 632, property transferred by the decedent shall not be included in his gross estate under this section if the decedent's only right or interest in the property consisted of an estate for his life."

It is noted that the Regulation as thus adopted completely omits any provision making the Commissioner's determination "conclusive". In fact, it does not provide for a determination by the Commissioner at all, but on the contrary states, simply and flatly, that the property shall not be taxed if the "decedent's only right or interest in the property consisted of an estate for his life."

ARGUMENT

In officially promulgating this Regulation, the Treasury Department has established a rule of general application under the Estate tax statute. It has thereby withdrawn entirely the only foundation upon which the decision below rested. Compare *Carpenter v. Wabash Railway Company*, 309 U. S. 23. At the same time, by reason of the deletion of those provisions in the proposed Regulation which involved an assertion by the Commissioner of the ultimate power to decide questions of law, the main point raised by the Petition for certiorari has been resolved favorably to the petitioners and has thus disappeared from the case.

In this state of the record, the only point now remaining is whether as a matter of law decedent had a possibility of reverter in the inter vivos trust which he established in 1928. This point was not passed upon by the Court below;

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and it will be recalled that the judgment of the Tax Court was favorable to petitioners.

Under the circumstances petitioners respectfully suggest to this Court that the interests of justice will be served if this Court should now issue a single order granting the writ of certiorari and remanding the case to the Court below with directions to determine whether or not the newly promulgated Treasury Regulation applies to this case so as to exempt petitioners from the asserted tax liability. The most elementary considerations of fairness clearly demand that this point be decided before the case is finally disposed of; and if the order suggested by petitioners were issued, no hearing, argument or further proceedings in this court would be required. All questions of New York law which now remain undecided could be then decided by the Court of Appeals.

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 103

ESTATE OF GILLIAT G. SCHROEDER, DECEASED, LOUISA R. SCHROEDER AND HELEN S. CROLL, EXECUTORS, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum findings of fact and opinion of the Tax Court (R. 12-14) [1] are not reported. The opinion of the Court of Appeals (R. 21) is reported at 172 F. 2d 864.

JURISDICTION

The judgment of the Court of Appeals was entered on March 9, 1949. (R. 22.) The petition

[1] Record references are to the separately bound "Appendix to Petitioner's Brief".

for a writ of certiorari was filed June 6, 1949. The jurisdiction of this Court rests upon 28 U.S.C., Sec. 1254.

QUESTION PRESENTED

Whether, for estate tax purposes, the value of property the decedent transferred in trust in 1928 is includible in his gross estate under Section 811 (c) of the Internal Revenue Code as constituting the value of property the transfer of which he intended to take effect in possession or enjoyment at his death.

STATUTE INVOLVED

Internal Revenue Code:

> SEC. 811. GROSS ESTATE.
>
> The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States——
>
> * * * * *
>
> (c) *Transfers in Contemplation of, or Taking Effect at Death.*—To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, * * * except in case of a bona fide sale for an adequate and full consideration in money or money's worth. * * *
>
> (26 U.S.C. 1946 ed., Sec. 811.)

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STATEMENT

The facts of the case, which were all stipulated (R. 15-20) and found by the Tax Court (R. 13-14), may be summarized as follows:

The petitioner is the Estate of Gilliat G. Schroeder, deceased, who died a resident of New York City on October 3, 1942. The executrices of his estate are Louisa R. Schroeder and Helen S. Croll, both residents of New York City. (R. 13.)

On January 11, 1928, the decedent executed an indenture of trust under which the Title Guarantee and Trust Company, a corporation duly organized and existing under the laws of the State of New York, was named trustee. (R. 13.) By the terms of the trust, the decedent transferred to the trustee certain mortgages and mortgage certificates of the total value of $28,350 (R. 13) for the following uses and purposes (R. 19):

> * * * to hold or sell, manage, care for, protect, invest and reinvest the same or the proceeds thereof, to collect the income and interest thereof, and after paying all necessary charges and expenses of the trust, including the trustee's commissions, to pay over the net interest and income thereof to the party of the first part [decedent] for and during the term of his life, and on the death of the party of the first part, to pay, turn over and distribute the principal of the said trust estate in equal shares to and among HELEN STEVENS SCHROEDER and GILLIAT G. SCHROEDER, JR., the chil-

> dren of the party of the first part, or if said children or either of them shall not survive the party of the first part, then to pay, turn over and distribute the principal of the said trust estate to such of the said children of the said party of the first part as shall survive him and the issue of such of said children of the party of the first part as may have died leaving issue surviving, such issue to take the share or interest which his, her or their parent would have taken if living.

No part of the value of the trust property was included in the estate tax return filed by the executrices of the decedent's estate. The entire value of the trust property was included in the estate by the Commissioner. (R. 14.)

The Tax Court held that the value of the trust property is not includible in decedent's gross estate as a transfer intended to take effect in possession or enjoyment at decedent's death within the meaning of Section 811 (c) of the Internal Revenue Code. (R. 14.) The Court of Appeals reversed the decision of the Tax Court in open court on the authority of this Court's decision in *Commissioner* v. *Estate of Church,* 335 U. S. 632 (R. 21), which was decided while this case was pending on appeal.

ARGUMENT

This case presents issues that were recently canvassed in full in *Commissioner* v. *Estate of Church,* 335 U.S. 632, and *Estate of Spiegel* v. *Commis-*

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sioner, 335 U.S. 701. The decision below is in accordance with the results reached in those cases. There is no occasion for further review by this Court.

Petitioner's principal contention relates to a proposed change in the Treasury regulations that would give certain retroactive relief in cases where the *sole* basis for the tax was a reserved life estate. However, there is no such proposal under consideration that would eliminate the tax where the decedent had a reversionary interest (whether expressly reserved or arising by operation of law), and where the possession or enjoyment of the ultimate takers is postponed at least until the decedent's death. In this case, the decedent had reserved not only a life estate, but had failed to provide for disposition of the property in the event that he should survive his two children and their descendants. The Government has contended throughout that there is a reversionary interest here. And in deciding against the Government, the Tax Court made it plain (R. 14) that its decision was contrary to *Commissioner* v. *Bayne's Estate,* 155 F. 2d 475 (C.A. 2), which had held that a reversionary interest arising by operation of law was a sufficient interest to bring the statute into play. The rule of the *Bayne's Estate* case is now authoritatively established as correct by the decision of this Court in the *Spiegel* case, and there is no occasion for this Court to review

the decision below merely to determine whether a reversionary interest in fact exists under state law. Accordingly, whether or not the proposed change in the regulations should be adopted, giving certain retroactive relief where the sole basis for the tax is a reserved life estate, there is no reason for further review in this case.

CONCLUSION

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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JULY, 1949.

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IN THE

Supreme Court of the United States

No. 103 October Term, 1949

ESTATE OF GILLIAT G. SCHROEDER, DECEASED, LOUISA R. SCHROEDER AND HELEN S. CROLL, EXECUTORS,
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

MOTION FOR STAY OF ISSUANCE OF MANDATE AND FOR LEAVE TO FILE PETITION FOR CLARIFICATION OF ORDER GRANTING WRIT OF CERTIORARI AND REMANDING THE CASE TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT.

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COMMISSIONER OF INTERNAL REVENUE,
Respondent

MOTION FOR STAY OF ISSUANCE OF MANDATE AND FOR LEAVE TO FILE PETITION FOR CLARIFICATION OF ORDER GRANTING WRIT OF CERTIORARI AND REMANDING THE CASE TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT.

1. The petitioners, Louisa R. Schroeder and Helen S. Croll, Executors of the Estate of Gilliat G. Schroeder, deceased, respectfully move the Court to issue an Order staying the issuance of the Mandate in this case, and granting the petitioners leave to file a Petition for clarification of this Court's Order of October 10, 1949, which granted a Writ of certiorari and remanded the case to the Court of Appeals for the Second Circuit for further consideration.

2. In support of the foregoing Motion petitioners respectfully bring to the attention of the Court the following matters:

(a) The Order of this Court entered on October 10, 1949, was as follows:

"PER CURIAM: The petition for writ of certiorari is granted. The judgment of the Court of Appeals is vacated and the case is remanded to that court

for further consideration in the light of T. D. 5741, 14 Fed. Reg. 5536, and, Commissioner v. Estate of Church, 335 U. S. 632, and Estate of Spiegel v. Commissioner, 335 U. S. 701."

(b) On October 25, 1949, the President of the United States signed the "Technical Changes Act of 1949," the effect of which is, in petitioners' view, to provide that neither *Estate of Church*, 335 U. S. 632, nor *Estate of Spiegel*, 335 U. S. 701, shall be applied to the estate of any decedent who died prior to October 7, 1949, as did the decedent in this case. (See Section 7 of Technical Changes Act of 1949, Public Law 378, H. R. 5268, 81st Congress, 1st Session, approved October 25, 1949).

(c) On October 31, 1949, during a discussion of a Motion in this case in the Court of Appeals for the Second Circuit, one of the judges of that Court, though not purporting to decide the point, informally expressed some doubt as to whether the Order of this Court authorized the Court of Appeals to consider the above mentioned Technical Changes Act of October 25, 1949. Accordingly, petitioners desire leave to file a Petition for clarification of the Order of this Court so as to insure that the Court of Appeals may in the course of its further consideration of the case do so in the light of the newly enacted Technical Changes Act as well as in the light of the cases and other authorities set forth in the Court's original Order.

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BLEED THROUGH

No. 103. ESTATE OF SCHROEDER ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. On petition for writ of certiorari to the United States Court of Appeals for the Second Circuit. *Per Curiam:* The petition for writ of

*For decisions *per curiam* and orders announced on June 27, 1949, see 337 U. S. 951 *et seq.*

certiorari is granted. The judgment of the Court of Appeals is vacated and the case is remanded to that court for further consideration in the light of T. D. 5741, 14 Fed. Reg. 5536, and *Commissioner* v. *Estate of Church*, 335 U. S. 632, and *Estate of Spiegel* v. *Commissioner*, 335 U. S. 701. *Thomas Raeburn White* and *George B. Francis* for petitioners. *Solicitor General Perlman, Assistant Attorney General Caudle, Arnold Raum, Ellis N. Slack* and *Melva M. Graney* for respondent. Reported below: 172 F. 2d 864. [This order amended, *post*, p. 884.]

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